

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Chapter 7

FRANKS, JAMES ALMON
FRANKS, FRANKIE INEZ

Case No. 8:14-bk-10869-RCT

Debtor(s).

**JOINT MOTION AND NOTICE OF PROPOSED
COMPROMISE OF CONTROVERSY BETWEEN
THE TRUSTEE AND WELLS FARGO BANK, N.A.**

**NOTICE OF OPPORTUNITY TO
OBJECT AND FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within twenty-one (21) days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at *Sam M. Gibbons U.S. Courthouse*, 801 N. Florida Avenue, Suite 555, Tampa, FL 33602-3899, and serve a copy on the movant's attorney, Douglas N. Menchise, Esquire, 2963 Gulf to Bay Blvd., Suite 300, Clearwater, FL 33759, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW the Trustee, Douglas N. Menchise, and Wells Fargo Bank, N.A. ("Wells Fargo"), by and through their respective attorneys, and hereby file this Joint Motion and Notice of Proposed Compromise of Controversy between the Trustee, Douglas N. Menchise, and Wells Fargo Bank, N.A., and hereby give notice to parties in interest, pursuant to Local Rule 2002-4, that the parties are hereby moving the Court to enter an Order approving a proposed compromise of controversy between the Trustee, Douglas N.

Menchise, and Wells Fargo.

Background of the Controversy:

1. On September 16, 2014, James Almon Franks and Frankie Inez Franks (the "Debtors") filed his voluntary petition under Chapter 7 of Title 11 of the United States Code.

2. Douglas N. Menchise is the duly appointed and acting Trustee.

3. On April 4, 1983, Mr. and Mrs. James A. Franks (the Debtors) purchased the real property located 16202 Parkside Drive, Tampa, FL 33624 (the "Real Property"), subject to a mortgage.

4. On March 26, 2013, James A. Franks refinanced the real property by executing a Note and Mortgage in favor of Wells Fargo in the amount of \$156,653.00. The Note and Mortgage referred to the Mortgagor/Debtors as James A. Franks, a Married Person, as his separate and non-homestead property. (The "Mortgage"). The Co-Debtor Spouse Frankie Inez Fanks did not execute the note and mortgage.

5. The Mortgage soon thereafter went into default and on October 13, 2014, Wells Fargo Bank, N.A. filed a Motion for Relief from the Automatic Stay (Doc #10) to enforce its Mortgage Lien on the Real Property.

6. On November 18, 2014, the Court granted Wells Fargo's motion for stay relief to enforce its lien on the Real Property (Doc #13).

7. That on or about January 16, 2015, Wells Fargo commenced its foreclosure action in the Circuit Court in and for Hillsborough County, Florida, in re: Wells Fargo

Bank, N.A., versus James A. Franks, et al, Case Number 15-CA-000506.

8. That title issues prevented the progress of Wells Fargo's foreclosure action.

9. That on January 10, 2018, citing, a bona fide dispute between the Trustee and Wells Fargo on the enforceability of the mortgage, the Trustee filed his motion for authority to sell the Real Property free and clear of liens (Doc #67).

10. That on February 22, 2018, the Court granted the Trustee's motion for authority to sell the property free and clear of liens per 11 U.S.C § 363(f)(5) with all liens attaching to any sale proceeds (Doc #79).

11. On January 10, 2018, the Trustee filed Adversary Proceeding number 8:18-ap-00008-RCT against Wells Fargo Bank, N.A., seeking, inter alia to avoid the Wells Fargo mortgage on the Real Property.

12. That Wells Fargo dismissed the Hillsborough Circuit Court Action Case No. 15-CA-000506, and filed their Answer and Defenses to the Complaint in adversary 8:18-ap-00008, alleging a valid lien pursuant to Florida law, and the Doctrine of Equitable Subrogation.

Proposed Compromise:

13. Without admitting or denying the viability of each party's legal positions, the Trustee and Wells Fargo have agreed to settle this adversary 8:18-ap-00008-RCT as follows:

- a. That the Trustee shall sell the Real Property to Wells Fargo for the net sum of \$55,000.00, with Wells Fargo paying all closing costs, back taxes, HOA fees, etc., associated with the sale/purchase of the Real Property.
- b. That the sale shall be free and clear of liens and encumbrances per the February 22, 2018, Court Order (Doc #79).
- c. That Wells Fargo waives any claim it has or may have against the Trustee and/or the bankruptcy estate, including any right to receive a distribution from the Bankruptcy Estate.
- d. That each party shall pay their own attorneys' fees and costs associated with this bankruptcy case, the adversary proceeding, as well as any underlying cause of action.

Why the Proposed Settlement is in the best Interest of the Estate:

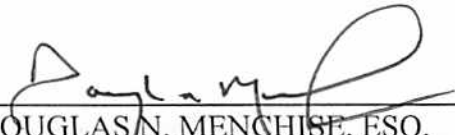
14. The Trustee feels that the proposed settlement is in the best interest of the Estate, since it resolves the pending litigation without additional fees or costs, brings \$55,000.00 into the estate, and resolves the disputed claim that Wells Fargo may have against the Bankruptcy Estate.

WHEREFORE, the Trustee and Wells Fargo move this Honorable Court grant

this motion to compromise and approve the above settlement between the Trustee and Wells Fargo Bank, N.A.

Dated: 8-3-18

Dated: 7/31/2018


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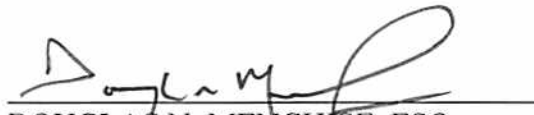

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this motion compromise and approve the above settlement between the Trustee and Wells

Fargo Bank, N.A.

Dated: 8-3-18

Dated: 7-30-18


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were delivered via CM/ECF to the Office of the United States Trustee; Debtor's Attorney, Herb Donica, Esquire; Wells Fargo Bank N.A.'s Attorneys, Jacqueline F. Kuyk, Esquire, and Martin S. Awerbach, Esquire; and all other electronic filers in this case; and by UNITED STATES MAIL to the Debtors, James Almon Franks and Frankie Inez Franks, 4215 Hollowtrail Drive, Tampa, FL 33624; and all parties on the Court's Mailing Matrix attached hereto,

on July 31, 2018.

/s/ Douglas N. Menchise
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